IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

WP(C).No. 3850 of 2004(G)

PETITIONER:

M.K.VIJAYAN, MURITHOTTATHIL HOUSE,
KUTTAMPUZHA, PRESENTLY RESIDING AT PINDIMANA P.O.
KOTHAMANGALAM, ERNAKULAM DISTRICT.

BY ADV. SRI.JEEMON K.ABRAHAM
SRI.T.P.SAJAN

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM

2. CHIEF CONSERVATOR OF FORESTS,
FOREST HEAD QUARTERS, THIRUVANANTHAPURAM

3. CONSERVATOR OF FORESTS,
OFFICE OF THE FOREST CONSERVATOR, THRISSUR

4. THE DEPUTY CONSERVATOR OF FOREST,
MALAYATTOOR DIVISION, KODANAD.P.O.

5. THE DISTRICT COLLECTOR,
CIVIL STATION, KAKKANAD, ERNAKULAM DISTRICT.

BY FOREST GOVERNMENT PLEADER SRI. RANJITH THAMPAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 SALE CONDITION PUBLISHED IN KERALA GAZETTE DATED 10.11.92

EXT.P2 DEMAND NOTICE DATED 2.8.02 FOR RECOVERY OF RS. 7562/-.

EXT.P3 TRUE COPY OF REGISTERED REPLY NOTICE DATED 21.10.02

EXT.P4 REPLY DATED 13.2.2003 ISSUED BY FOURTH RESPONDENT.

EXT.P5 DEMAND NOTICE ISSUED BY 5TH RESPONDENT UNDER KERALA REVENUE RECOVERY ACT DATED 26.7.2003

EXT.P6 OBJECTION FILED BY THE PETITIONER TO EXT.P5

EXT.P7 REPLY DATED 1.9.2003 ISSUED BY FIFTH RESPONDENT TO EXT.P6

EXT.P8 TRUE COPY OF THE REPRESENTATION PENDING BEFORE 2ND RESPONDENT DATED 17.9.2003

RESPONDENTS' EXHIBITS:

EXT.R4(a) TRUE COPY OF THE SALE NOTIFICATION NO. T2-7638/92 DATED 23.10.1992

EXT.R4(b) G.O. (P) NO. 691/97 DATED 13.8.1997 AND ITS ANNEXURE

EXT.R4(c) TRUE COPY OF LETTER DATED 7.9.1994

EXT.R4(d) TRUE COPY OF POSTAL ACKNOWLEDGEMENT CARDS.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

W.P.C. NO. 3850 OF 2004

Dated this the 16th day of November, 2007

JUDGMENT

Petitioner is challenging recovery proceedings for recovery of compensation claimed by the Forest Department. The transaction pertains to purchase of soft wood by the petitioner from the Forest Department on 22.7.1993. The sale price offered by the petitioner was Rs. 9072/- and the entire sale price was deposited on the date of purchase itself. However, it is conceded by the Government Pleader on behalf of the respondents that sale was confirmed on 27.11.1993. According to the petitioner, on account of inordinate delay in confirmation of sale, soft wood got completely damaged and much of it's value was lost. Therefore petitioner did not rightly take the material and petitioner himself abandoned the amount remitted by him. Even though full sale price was recovered and sale was confirmed on 27.11.1993, the Forest Department went on notifying the goods again for sale. Government Pleader submitted that auctions were notified on 17.3.1994, 2.6.1994 and 21.7.1994, and on none of the occasions there

was any bidder. The cost demanded from the petitioner is 50% of Rs. 4609/- incurred for newspaper advertisements and Rs. 6180/- incurred for gazette publication. It appears that advertisement was jointly for another item of property and therefore 50% is claimed from the petitioner and 50% from another contractor, the name and details of whom are not available. This is a unique case which proves beyond doubt the incompetence, mismanagement and lack of common sense among higher level forest officials. Admittedly the sale price of Rs. 9072/- offered by the petitioner was acceptable to the forest department and they confirmed the sale, though with a delay of four months. The sale itself was during peak of monsoon and any sensible forest official handling the matter should have arranged for confirmation of sale without any delay because it is common knowledge that soft wood is highly perishable and Government as well the contractor would suffer loss if confirmation of sale is delayed. The worst part of the transaction is repeated reauctioning of completely destroyed soft wood at a high cost which is above the value at which it was once sold. This action shows how stupidly the Govt. functions. Even though

Government Pleader tried to justify the total bungling of the forest officials as on account of procedure, I am unable to accept the explanation. No one sensible should authorise this non-sense to take place in Government. I do not think this case should end up in just granting relief to the petitioner and this Court should in public interest issue necessary directions to the Government.

In the circumstances, W.P. is allowed cancelling the demand against the petitioner. Even though it is unfair to deny refund of purchase price paid by the petitioner, this Court declines to grant it because petitioner did not approach this Court when delay occurred in confirmation of sale, which led to deterioration and destruction of the purchased articles. However, I find the amount incurred in auction publications which is the loss suffered by the Government, should be recovered from the officers in charge because they were well aware that the completely deteriorated soft wood would not even fetch the cost incurred for advertisement. In the circumstances, the Secretary to Government, Forest Department, Thiruvananthapuram, is made addl. sixth respondent. He is directed to call for the files and conduct

enquiry in the matter and recover the cost incurred by the Government for publication in newspapers from the concerned officials. The action taken report will be filed by the addl. sixth respondent on or before 30.6.2008. There will be a further direction to the addl. sixth respondent to issue orders at the earliest fixing the time for confirmation of sale of perishable goods like soft wood without any delay and in the action taken report he will state the rule or orders issued in this regard also

Post in the first week of July, 2008.

(C.N. RAMACHANDRAN NAIR)
Judge